17-439

IN THE SUPREME COURT OF THE UNITED STATES.

No. 5.—Original.

ELIZA A. J. ATOCHA, ADMINISTRATRIX, ETC.,

vs.

THE UNITED STATES.

MOTION FOR AN ALTERNATIVE WRIT OF MANDAMUS TO THE COURT OF CLAIMS.

1 In the Supreme Court of the United States. December term, 1872.

And now comes the Attorney-General, on behalf of the United States, and states that, heretofore and previous to the twenty-sixth day of May, 1873, one Alexander J. Atocha commenced an action in the Court of Claims against the United States, by the filing of a petition therein, in pursuance of the rules and practice of said court, and an act of Congress approved February fourteenth, 1865, said act being in the words and figures following, to wit:

"That the Court of Claims be, and the said court is hereby, directed to examine into the claims of Alexander J. Atocha against the government of Mexico, for losses sustained by him by reason of his expulsion from that republic in eighteen hundred and forty-five; and if they shall be of opinion that the said claim was a just one against Mexico when the treaty of eighteen hundred and forty-eight was ratified, and was embraced by said treaty, they shall then fix and determine the amount of the same; and that the loss or damage so sustained, being adjudicated and determined by said court, the same shall be paid to the said Alexander J. Atocha out of any money in the Treasury not otherwise appropriated: Provided, however, That the amount so to be paid shall in no event exceed the balance of the three and a quarter millions of dollars provided by the fifteenth article of the treaty of Gaudaloupe Hidalgo for the payment of claims of citizens of the United States against the government of Mexico, which still remains unapplied to that object." The said petitioner claiming to recover for the losses and damages sustained by him by his expulsion from the republic of Mexico referred to in said act of Congress, the prayer of which petition was in the words and figures following, to wit:

"Your petitioner, therefore, prays that you will, the premises considered, examine into the claims of your petitioner aforesaid, for losses sustained by him by reason of his said expulsion from the republic of Mexico, and that you will fix and determine the amount of the same, and enter a judgement in favor of your petitioner for the said sum of two hundred and eleven thousand one hundred and ten dollars and twenty-nine cents, the balance aforesaid yet remaining of the fund aforesaid in the Treasury of the United States, and will grant to your petitioner such other and further relief in this behalf as may be lawful and right.

"And, as in duty bound, your petitioner will ever pray.

"A. J. ATOCHA.

"JOHN JOLLIFFE, *Solicitor.*"

That issue was duly joined in said cause, and the evidence taken and cause tried and proceedings had in the same manner as all other cases in said Court of Claims.

That, on the said twenty-sixth day of May, 1873, the said Court of Claims rendered judgment for said claimant, and against the United States, for the sum of $207,449.37, in the words and figures following, to wit:

2 "In the Court of Claims.

"ALEXANDER J. ATOCHA'S ADM'R'X
"*vs.*
"THE UNITED STATES. } No. 2165.

At a Court of Claims held at the Capitol, in the city of Washington, May 26th, A. D. 1873, judgment was ordered to be entered up as follows:

NO. 5 ORIGINAL.—1

"The court having, in pursuance of the act for the relief of Alexander J. Atocha, approved February 14, 1865, examined into the claim of said Atocha against the government of Mexico for losses sustained by him by reason of his expulsion from the republic of Mexico in the year 1845, are of the opinion that the said claim was a just one against Mexico when the treaty of 1848 between that country and the United States was ratified, and was embraced by said treaty, and do fix and determine the amount of the loss and damage sustained by said Atocha by reason of said expulsion at the sum of two hundred and seven thousand eight hundred and fifty-two dollars and sixty cents, which sum will be satisfied and discharged by the payment by the United States to Eliza J. Atocha of two hundred and seven thousand four hundred and forty-nine dollars and thirty-seven cents, the balance of the three and a quarter millions of dollars provided by the fifteenth article of said treaty for the payment of claims of citizens of the United States against the government of Mexico, which now remains unapplied to that object.

"By the court."

That, after the said twenty-sixth day of May, and before the twenty-first day of June, 1873, the said court adjourned to the twentieth day of October, 1873.

That, on the said twenty-first day of June, 1873, the United States, by their Attorney-General aforesaid, filed with the clerk of said court an application for and notice of an appeal from said judgment to this court, signed by him in manner and form as required by the rules and practice of said court. which application is indorsed by said clerk as filed June 21, 1873, and on application to the chief justice of said Court of Claims for an allowance of said appeal, and on the third day of July, 1873, the said chief justice refused said application and made the following endorsement on said notice of appeal, to wit:

"The appeal above prayed for is refused. Before the adjournment of the court over to October next, the judges thereof in conference decided that no appeal is by law allowable in this case.

"C. D. DRAKE,
"*Chief Justice.*

"JULY 3RD, 1873."

And the Attorney-General now moves the court here for an alternative writ of mandamus directed to the judges of the said Court of Claims, commanding said court to allow said appeal, or, in default thereof, to show cause to the contrary at a time to be named by this court, or for such other or further order or relief in the premises as to this court shall seem proper.

GEO. H. WILLIAMS,
Attorney-General.
JOHN GOFORTH,
Assistant Attorney-General.

3 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the Court of Claims, greeting:

Whereas lately in the Court of Claims, in a certain cause therein depending between Alexander J. Atocha's administratrix, claimant, and the United States, defendant, the said Court of Claims, on the 26th day of May, A. D. 1873, rendered a judgment in favor of the said claimant;

and whereas the said defendant, on the 21st day of June, thereafter, filed its application for and notice of appeal from said judgment to the Supreme Court of the United States; and whereas, on the third day of July following, the said application for an appeal was refused by the said Court of Claims; and whereas at the present session of the
4 Supreme Court of the United States, held at Washington on the 2nd Monday of October, A. D. 1873, the said defendant, by its counsel, filed its motion and petition praying that a writ of alternative mandamus from said Supreme Court be awarded and issued to the judges of the said Court of Claims, commanding them to allow an appeal in said cause, or, in default thereof, to show cause to the contrary at a time to be named by this court, or for such other or further order or relief in the premises as to this court shall seem proper. On consideration whereof it was ordered by this court that a writ of alternative mandamus be awarded and issued in accordance with the prayer of the petitioner.

You, therefore, are hereby commanded that, immediately after the receipt of this writ, and without delay, you proceed to allow an appeal from said judgment to this court, or, in default thereof,
5 that you appear forthwith before our Supreme Court of the United States, now in session in Washington, and show cause why you refuse so to do.

Witness the honorable Nathan Clifford, Senior Associate Justice of said Supreme Court, the 29th day of October, A. D. 1873.

D. W. MIDDLETON,
Clerk Supreme Court, U. S.

6 To the Supreme Court of the United States:

In answer to the alternative writ of mandamus issued out of the Supreme Court of the United States to the judges of the Court of Claims, commanding them to allow an appeal from the judgment of said Court of Claims, in a certain cause wherein Alexander J. Atocha's administratrix was claimant, and the United States were defendants, or, in default thereof, that they show cause why they refuse so to do, the chief justice and two of the judges of said Court of Claims now come, and respectfully show cause, as follows, why they refuse to allow an appeal from the said judgment:

First. The said cause of Alexander J. Atocha's administratrix against the United States was instituted in the Court of Claims, not under
7 any general grant of jurisdiction to said Court, but under the authority of a private and special act passed by Congress on the 14th day of February, 1865, "For the relief of Alexander J. Atocha," whereby, as it appears to the undersigned, no other jurisdiction was conferred on said Court of Claims than to do the following acts;

1. To make an examination into the claims of said Atocha against the government of Mexico for losses sustained by him by reason of his expulsion from that republic in eighteen hundred and forty-five.

2. To decide whether his claim was a just one against Mexico when the treaty of 1848 was ratified.

3. To decide whether the claim, if found just, was a claim embraced by that treaty.

And 4. If those points should be decided in his favor, then to fix and determine the amount of the said Atocha's claim against the government of said republic of Mexico.

Second. The said act does not, as it appears to the undersigned,
8 authorize said court to render any judgment in favor of said Atocha against the United States, nor has any such judgment been

rendered; but the judgment from which the appeal was prayed by the United States is in the terms following, to wit:

"The court having, in pursuance of the 'Act for the relief of Alexander J. Atocha,' approved February 14, 1865, examined into the claim of said Atocha against the government of Mexico for losses sustained by him by reason of his expulsion from the Republic of Mexico in the year 1845, are of the opinion that the said claim was a just one against Mexico when the treaty of 1848 between that country and the United States was ratified, and was embraced by said treaty; and do fix and determine the amount of the loss and damage sustained by said Atocha by reason of said expulsion at the sum of $207,852.60; which sum will be satisfied and discharged by the payment by the United States
9 to Eliza A. J. Atocha, administratrix of the said Alexander J. Atocha, of $207,449.37, the balance of the three and a quarter millions of dollars provided by the fifteenth article of said treaty for the payment of claims of citizens of the United States against the government of Mexico, which now remains unapplied to that object."

Third. On the 5th of April, 1870, an act amendatory of said act was passed, authorizing the said Atocha, in the prosecution of his said claim, to use such portions of the evidence taken in pursuance of the rules and regulations of the commission, established under the fifteenth section of the treaty of Gaudalupe Hidalgo, and laid before said commission, as consisted of the evidence of persons since deceased, and provided that the Government, in defending against said claim, should have like rights. And the said amendatory act provided that such evidence should be received by the Court of Claims, so far as the subject-
10 matter thereof is competent testimony, and the court should give it such weight as in their judgment, under all the circumstances, it ought to have.

Fourth. Neither of said acts authorize an appeal from the decision of the Court of Claims upon said claim; but the first-mentioned of said acts declared that the loss or damage sustained by said Atocha, being adjudicated and determined by said court, the same should be paid to him out of any money in the Treasury not otherwise appropriated: Provided, however, that the amount to be paid should in no event exceed the balance of the three and a quarter millions of dollars provided by the fifteenth article of the treaty of Gaudalupe Hidalgo for the payment of claims of citizens of the United States against the government of Mexico, which still remains unapplied to that object, which limitation upon the amount to be paid to said Atocha was duly observed
11 by the Court of Claims in rendering its decision, as appears by that decision as above set forth.

Fifth. In view of the foregoing positions, the undersigned are of the opinion that it was the intention of Congress that the Court of Claims should act in the premises, not as a court trying an action against the United States, but as a commission similar to that which was organized in the year 1849, under the fifteenth article of the treaty of Gaudalupe Hidalgo; that no claim against the United States was submitted to its adjudication; that the United States had, in fact, no interest in the issue of the proceeding, being a mere holder of a fund provided by treaty for the payment of claims against the Republic of Mexico; that when a rehearing was granted by Congress to Atocha, it was intended that it could be had on the same terms as the previous hearing was had before said commission, and that as no appeal
12 did lay in favor of either the claimant or the United States from the decision of that commission, but its awards were by said treaty

declared to be final and conclusive, so, in the absence of the relief of Atocha of any provision for an appeal from the deci court, no such appeal lies, unless some other provision of ize it.

And the undersigned are further of the opinion that the general provisions of law contained in the acts of March 3, 1863, and June 25, 1868, in relation to appeals from judgments of the Court of Claims, do not apply to this case, because the first-named of said acts gives an appeal only from judgments on claims against the United States, and the latter gives it only from judgments adverse to the United States; and the decision in Atocha's case was neither upon a claim of that description, nor was it adverse to the United States.

The foregoing constitute all the cause which the undersigned
13 have to show why the Court of Claims refuses to allow the appeal in the case of Atocha's administratrix vs. The United States.

November 4, 1873.

C. D. DRAKE.
CHARLES C. NOTT.
SAM. MILLIGAN.

(Indorsement on cover:) No. 5, original. Ex parte. In the matter of The United States, petitioner. In the matter of Alex'r J. Atocha's adm'x vs. The United States.

rendered; but the judgment from which the appeal was prayed by the United States is in the terms following, to wit:

"The court having, in pursuance of the 'Act for the relief of Alexander J. Atocha,' approved February 14, 1865, examined into the claim of said Atocha against the government of Mexico for losses sustained by him by reason of his expulsion from the Republic of Mexico in the year 1845, are of the opinion that the said claim was a just one against Mexico when the treaty of 1848 between that country and the United States was ratified, and was embraced by said treaty; and do fix and determine the amount of the loss and damage sustained by said Atocha by reason of said expulsion at the sum of $207,852.60; which sum will be satisfied and discharged by the payment by the United States
9 to Eliza A. J. Atocha, administratrix of the said Alexander J. Atocha, of $207,449.37, the balance of the three and a quarter millions of dollars provided by the fifteenth article of said treaty for the payment of claims of citizens of the United States against the government of Mexico, which now remains unapplied to that object."

Third. On the 5th of April, 1870, an act amendatory of said act was passed, authorizing the said Atocha, in the prosecution of his said claim, to use such portions of the evidence taken in pursuance of the rules and regulations of the commission, established under the fifteenth section of the treaty of Gaudalupe Hidalgo, and laid before said commission, as consisted of the evidence of persons since deceased, and provided that the Government, in defending against said claim, should have like rights. And the said amendatory act provided that such evidence should be received by the Court of Claims, so far as the subject-
10 matter thereof is competent testimony, and the court should give it such weight as in their judgment, under all the circumstances, it ought to have.

Fourth. Neither of said acts authorize an appeal from the decision of the Court of Claims upon said claim; but the first-mentioned of said acts declared that the loss or damage sustained by said Atocha, being adjudicated and determined by said court, the same should be paid to him out of any money in the Treasury not otherwise appropriated: Provided, however, that the amount to be paid should in no event exceed the balance of the three and a quarter millions of dollars provided by the fifteenth article of the treaty of Gaudalupe Hidalgo for the payment of claims of citizens of the United States against the government of Mexico, which still remains unapplied to that object, which limitation upon the amount to be paid to said Atocha was duly observed
11 by the Court of Claims in rendering its decision, as appears by that decision as above set forth.

Fifth. In view of the foregoing positions, the undersigned are of the opinion that it was the intention of Congress that the Court of Claims should act in the premises, not as a court trying an action against the United States, but as a commission similar to that which was organized by the year 1849, under the fifteenth article of the treaty of Gaudalupe Hidalgo; that no claim against the United States was submitted to its adjudication; that the United States had, in fact, no interest in the issue of the proceeding, being a mere holder of a fund provided by treaty for the payment of claims against the Republic of Mexico; that when a rehearing was granted by Congress to Atocha, it was provided that it could be had on the same terms as the previous hearing was had before said commission, and that as no appeal
12 lay in favor of either the claimant or the United States from the decision of that commission, but its awards were by said treaty

declared to be final and conclusive, so, in the absence of the act for the relief of Atocha of any provision for an appeal from the decision of that court, no such appeal lies, unless some other provision of law authorized it.

And the undersigned are further of the opinion that the general provisions of law contained in the acts of March 3, 1863, and June 25, 1868, in relation to appeals from judgments of the Court of Claims, do not apply to this case, because the first-named of said acts gives an appeal only from judgments on claims against the United States, and the latter gives it only from judgments adverse to the United States; and the decision in Atocha's case was neither upon a claim of that description, nor was it adverse to the United States.

The foregoing constitute all the cause which the undersigned
13 have to show why the Court of Claims refuses to allow the appeal in the case of Atocha's administratrix vs. The United States.

November 4, 1873.

C. D. DRAKE.
CHARLES C. NOTT.
SAM. MILLIGAN.

(Indorsement on cover:) No. 5, original. Ex parte. In the matter of The United States, petitioner. In the matter of Alex'r J. Atocha's adm'x vs. The United States.

Supreme Court of the United States.

OCTOBER TERM, 1873.

ELIZA A. J. ATOCHA, ADMINISTRATR. :,

vs.

THE UNITED STATES.

Application for a peremptory mandamus by the United States to perfect an appeal.

ARGUMENT OF COUNSEL FOR APPELLEE ON MOTION OF UNITED STATES FOR MANDAMUS.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1873.

ELIZA A. J. ATOCHA, ADMINISTRATRIX,

vs.

THE UNITED STATES.

Application for a peremptory mandamus by the United States to perfect an appeal.

ARGUMENT OF COUNSEL FOR APPLELEE ON MOTION OF UNITED STATES FOR MANDAMUS.

This was a proceeding instituted by Atocha, in the Court of Claims, by authority of an act of Congress, (see 15th Stat. at Large, pp. 595–6,) which alone gave the court jurisdiction. It was not a claim which, had it been sued within six years, could have been entertained by the Court of Claims by authority of any law of Congress, or the organic acts creating said court.

Its standing in that court is, therefore, referable to this special act of Congress, and the power to hear and consider the case, and, as well, the final disposition to be made of it, are prescribed in said act.

It directs that court: 1st. To examine into the claim for losses sustained by Atocha by reason of his expulsion from the Republic of Mexico, in 1845.

2d. If they are of the opinion that said claim was a just one against Mexico, when the treaty of 1848 was ratified,

and was embraced by said treaty, said court shall fix and determine the amount of the same.

3d. The same shall be paid to said Atocha out of any money in the Treasury not otherwise appropriated. The *proviso* of the act restricts the amount to be paid to the sum remaining in the Treasury of the three millions and a quarter provided by the 15th article of the treaty of Guadaloupe Hidalgo. (See 9th Stat. at Large, p. 933, for that article of the treaty.)

Congress, also, passed another enabling act with respect to this case on the 15th April, 1870, (16th Stat. at Large, p. 633,) authorizing the use in the Court of Claims, by either party, "of such portions of the evidence taken in pursuance of the rules and regulations of the Commission," (created by the treaty aforesaid,) "and laid before said Commission, as consists of the evidence of persons since deceased."

On May 26th, 1873, the Court of Claims rendered a judgment in favor of Mrs. Atocha, administratrix, as follows, viz:

JUDGMENT.

Extract from Journal of the Court of Claims, Vol. 3, pp. 446, and 448–9.

WASHINGTON, *May* 26, 1873.

The court met according to adjournment. Present: Chas. D. Drake, Ch. Justice; Charles C. Nott and Samuel Milligan, judges.

Alexander J. Atocha's administratrix *vs.* The United States.

The Chief Justice read the opinion of the court, and judgment was ordered to be entered, as follows:

The court having, in pursuance of the "Act for the relief of Alexander J. Atocha, approved February 14, 1865," examined into the claim of said Atocha against the Government of Mexico, for losses sustained by him by reason of his expulsion from the Republic of Mexico, in the year 1845, are of the opinion that said claim was a just one against Mexico, when the treaty of 1848 between that country and the United States was ratified, and was embraced by said

treaty, and do fix and determine the amount of the loss and damage sustained by said Atocha by reason of said expulsion at the sum of two hundred and seven thousand eight hundred and fifty-two dollars and sixty cents, which sum will be satisfied and discharged by the payment by the United States to Eliza A. J. Atocha of two hundred and seven thousand four hundred and forty-nine dollars and thirty-seven cents, the balance of the three and a quarter millions of dollars provided by the fifteenth article of said treaty for the payment of claims of citizens of the United States against the Government of Mexico, which now remains unapplied to that object.

The court filed findings of fact.

Judge Nott read a concurring opinion.

On the 21st of June, 1873, the United States filed an application for the allowance of an appeal. During the summer recess of the court, this application was presented to the Chief Justice of the Court of Claims, and, on the 3d July, 1873, that officer refused to allow the appeal. Thereupon the United States applied to the Supreme Court for an alternative writ of mandamus, and it was granted, as matter of course. And now, upon the coming in of the return to that mandamus, Mrs. Atocha shows cause against the issuing of a peremptory mandamus.

No appeal is allowable by law in this case.

The jurisdiction is derived from and wholly referable to this special act. No general jurisdiction conferred upon the Court, by other acts, is invoked; on the contrary, the act contains within itself all the power and authority necessary to fully consider and finally dispose of the case, *even to the payment of the amount found to be due.* It leaves nothing to be done outside of the act itself. It is as if Congress had said, we appoint the Judges of the Court of Claims a commission like unto the one we did create to consider like claims, (9th U. S. Stat. at Large, pp. 393–4,) and clothe them with like powers, and the award of said judges shall be treated and paid like the awards of said commission were paid, except-

ing only that in the latter case they were paid in "certificates of stock," bearing six per cent. interest; whereas, in the former, they are paid in money out of the Treasury. Congress specifies the particular fund out of which the award shall be paid, and is particular to limit the payment to the balance that may remain of the sum set apart by the 15th article of the treaty of Guadaloupe Hidalgo. It may take the whole of that balance but cannot take more.

By this act the determination of the question as to whether the claim is a just one, within the limitation of the act, devolves upon the court, and they are required to fix the amount of damages. It leaves the court to reach these two points by such evidence as they may conclude is sufficient, just as they did the commission aforesaid, except that they passed another act, requiring the court to take and consider the evidence of persons deceased, which was filed before the commission, in addition to such other evidence as might be offered for their consideration. Thus showing that Congress meant to make this a special case, wholly unlike any other, and to confer special jurisdiction, to the end that there might be an award such as the commission might have made, and providing for its payment in the same act, as they did in the act creating the commission, leaving nothing to be done after the award but the payment of the damages.

The Supreme Court (DeGroot's case, 5 Wallace, p. 419,) has so clearly laid down the rule, that we are tempted to extract the whole opinion on this point, which is as follows, viz:

"It is true that ordinarily when we seek for the foundation of this jurisdiction, we look to the general laws creating the court, and defining causes of which it may have cognizance. But it is equally true that whenever Congress chooses to withdraw from that jurisdiction any class of cases which had before been committed to its control, as it has done more than once, it has the power to do so, or to prescribe the rule by which such cases may be determined. Its right to do this, in regard to any particular case, must rest on the same

foundation, and no reason can be perceived why Congress may not at any time withdraw a particular case from the cognizance of that court, *or prescribe in such case the circumstances under which alone the court may render judgment against the Government.*"

There is nothing in either of these special acts which authorizes an appeal, and we apprehend, in the absence of any such legislation, none can be claimed.

But, it is said that the 1st section of the act of June 25th, 1868, authorizes the appeal. We submit, with all deference, that such view is erroneous.

If that law embraced all special cases wherein the jurisdiction is circumscribed, and the powers of the court confined within the narrowest limits, we submit that this case is not embraced in it, but expressly excluded from it by the terms of the act. This is not a proceeding, much less a "judgment," adverse to the United States. There was no controversy with the United States; there was no question of dispute between the United States and claimant. The United States, by the 15th article of the Treaty of Guadaloupe Hidalgo, had agreed to appropriate, and did appropriate, thrree and a quarter millions of dollars to pay her own citizens for damages done to them and their property by the authorities of Mexico, according to the awards of the commission to be appointed. This was a treaty stipulation, made in pursuance of the settlement by that treaty of all matters of dispute between the two Governments; so that the sum set apart by that article was so set apart to pay the debts of Mexico, and was a trust fund for that purpose, and consequently the money of Mexico held by the United States.

The United States agreed to audit the claims and disburse the fund. Beyond that, they had no further interest in it. Although the suit stands as against the United States, that may be regarded as mere description, since the award is in favor of claimant, and the terms of the award or judgment do not order or direct the United States to pay it, but says:

"Which sum will be satisfied and discharged by payment by the United States to Eliza A. J. Atocha, administratrix of the estate of said Alexander J. Atocha, of $207,449 37, the balance of the three and a quarter millions of dollars provided by the fifteenth article," &c.

Thus the words are suggestive or directory, not mandatory, and the award to pay is of this special fund, and the Court of Claims says that it will be satisfied and discharged by the payment out of that fund, leaving the act of Congress to guide the accounting officers in the execution and satisfaction of the award by the light of the decision of the court. Thus it is apparent that this is not a "judgment" adverse to the United States, and is not, therefore, appealable under this act of June 25th, 1868. But there is another ground why this appeal cannot be entertained, viz: That the Court of Claims was created by this special act a special tribunal in pursuance with the terms of the 15th article of said treaty. It is true that Congress passed an act whereby they created a Board of Commissioners, provided for in the treaty; but it is equally true that that board did not complete the duties which the United States assumed to discharge by the treaty.

The claim of Atocha was not settled. Hence, Congress creates another tribunal, clothed with similar powers, to consider Atocha's claim. Although the new tribunal is the Court of Claims, the duties thus cast upon it are not judicial functions, to be exercised in the ordinary powers of a court of justice. There is nothing in the act which makes these proceedings adversary, which requires process to be served on any one, as a party to the suit, which requires the United States to appear in said cause and resist the claim or which requires any pleadings to be filed other than the presentation of the claim itself; neither is there any form prescribed in which it shall be presented. Manifestly it was not intended to be a judicial proceeding wherein the forms of a suit at law or a proceeding in chancery were to be ob-

served and followed. The court were to award, as were, also, the commission, the amount of damages according to to the terms of the treaty, and within the circumscribed limits of the special act of Congress.

The case of the United States *ve.* Ferreira, (13 Howard, p. 46,) is analagous to this. Indeed, looking at the act of Congress, which conferred jurisdiction on the district court of Florida, it is not easy to see why it is not directly in point, and the case decisive of this question. (See 9th U. S. Stat. at Large, p. 738.) Therein Congress referred claims, which were covered by a treaty between Spain and the United States, to the district judge of Florida, to "adjudicate." There the law provided for a *petition* to be filed; *here* there is no such provision. The Supreme Court holds that the proceedings before and by said judge were *not judicial*, and the Supreme Court had not jurisdiction of the case by appeal. There, the jurisdiction given the district court was by a special act of Congress to "adjudicate" a claim which was not presented within the time limited by the treaty. Here, the same power and no more was conferred upon the Court of Claims, viz: to "adjudicate and determine" the amount of damages. If there was no authority to appeal in the case of Ferreira, there is surely none in this case. That case was decided upon a principle which is still extant and alike applicable to both cases. No subsequent legislation has altered or impaired that principle, but is left *in tact*, as the Chief Justice laid it down, and remains a rule of action for this court.

R. M. CORWINE,
EDWARD JANIN,
Of Counsel for Appellee.

WASHINGTON, D. C, *Nov.* 5, 1873.

Judge Davy

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1873.

THE UNITED STATES, ON RELATION OF GEORGE H. WILLIAMS, ATTORNEY GENERAL,
vs.
THE JUDGES OF THE COURT OF CLAIMS.
} No. 5 Original.

Brief for Respondents.

STATEMENT OF THE CASE.

This is an application for a mandamus against the Court of Claims, to compel that Court to allow and certify an appeal from the decision and award made by the Court of Claims in the case of Eliza A. J. Atocha, administratrix of the estate of Alexander J. Atocha, deceased. The petition for the allowance of the alternative writ sets forth the following facts:

First. That by an act of Congress approved February 14, 1865, the Court of Claims was authorized and "*directed*" to examine into the claims of Alexander J. Atocha against the Government of Mexico. The act by which

the said Court was so authorized and directed is as follows:

That the Court of Claims be, and the said Court is hereby, directed to examine into the claims of Alexander J. Atocha against the Government of Mexico, for losses sustained by him by reason of his expulsion from that Republic in 1845; and if they shall be of opinion that the said claim was a just one against Mexico, when the treaty of 1848 was ratified, and was embraced by said treaty, they shall then fix and determine the amount of the same; and that the loss or damage so sustained being adjudicated and determined by said Court, the same shall be paid to the said *Alexander J. Atocha* out of any money in the Treasury not otherwise appropriated; *Provided, however*, That the amount so to be paid shall in no event exceed the balance of the three and a quarter millions of dollars provided by the fifteenth article of the treaty of *Gaudaloupe Hidalgo*, for the payment of claims of citizens of the United States against the Government of Mexico, which still remains unapplied to that object. Stats. at Large, Vol. 13, p. 595.

Second. That the Court of Claims, in execution of the requirements of the said act of Congress, on the 26th day of May, A. D. 1873, announced the following conclusions of law:

1. That the claim of the said Atocha for and on account of his expulsion from Mexico was a just claim against Mexico when the treaty of 1848 was ratified.
2. That said claim was embraced by said treaty.
3. That the claimant is entitled to have allowed her, as administratrix of said Atocha, the amount of damages fixed and determined by the Court.

And thereupon the said Court caused the entry in the said cause of an award or finding in the following terms:

The Court having, in pursuance of the "act for the relief of Alexander J. Atocha," approved February 14, 1865, examined into the claim of said Atocha against the Government of Mexico for losses sustained by him by reason of his expulsion from the republic of Mexico in the year 1845, are of the opinion that the said claim was a just one

against Mexico when the treaty of 1848 between that country and the United States was ratified, and was embraced by said treaty; and do fix and determine the amount of the loss and damage sustained by said Atocha by reason of said expulsion at the sum of $207,852 60; which sum will be satisfied and discharged by the payment by the United States to Eliza A. J. Atocha, administratrix of the said Alexander J. Atocha, of $207,449 37, the balance of the three and a quarter millions of dollars provided by the fifteenth article of said treaty for the payment of claims of citizens of the United States against the Government of Mexico, which now remains unapplied to that object.

Third. That the United States, by John Goforth, Assistant Attorney General, on the 21st day of June, A. D. 1873, prayed an appeal to this court from the said award or finding, so as aforesaid rendered in the said cause by the said Court of Claims.

Fourth. That the Chief Justice of the said Court of Claims, on the 3d day of July, A. D. 1873, indorsed the application for the allowance of the said appeal as follows:

The appeal above prayed for is refused. Before the adjournment of the court over to October next the judges thereof, in conference, decided that no appeal is by law allowable in the case.

C. D. DRAKE, *C. J.*

JULY 3, 1873.

It is therefore prayed that a writ of mandamus issue to compel the said Court of Claims to allow an appeal from the said judgment or award, and to cause the record upon said appeal to be transmitted to this court.

II.

THE RETURN TO THE ALTERNATIVE WRIT.

The Court of Claims, in its return to the alternative writ, states the reasons for its refusal to allow the appeal for which the Assistant Attorney General prayed in his motion filed in said cause on the 21st day of June, 1873, substantially as follows:

First. The said cause of Alexander J. Atocha's administratrix against the United States was instituted in the Court of Claims not under any general grant of jurisdiction to said court, but under the authority of a private and special act passed by Congress on the 14th of February, 1865, "for the relief of Alexander J. Atocha," whereby, as it appears to the undersigned, no other jurisdiction was conferred on said Court of Claims than to do the following acts: 1. To make an examination into the claims of said Atocha against the Government of Mexico for losses sustained by him by reason of his expulsion from that republic in eighteen hundred and forty-five. 2. To decide whether his claim was a just one against Mexico when the treaty of 1848 was ratified. 3. To decide whether the claim, if found just, was a claim embraced by that treaty. 4 If those points should be decided in his favor, then to fix and determine the amount of the said Atocha's claim against the Government of said republic of Mexico.

Second. The said act does not, as it appears to the undersigned, authorize said court to render any judgment in favor of said Atocha against the United States, nor has any such judgment been rendered; but the judgment from which the appeal was prayed by the United States is in the terms following, to wit:

(The award is set out in full in the statement of the case.)

Third. On the 5th of April, 1870, an act amendatory of said act was passed, authorizing the said Atocha, in the prosecution of his said claim, to use such portions of the evidence taken in pursuance of the rules and regulations of the commission established under the fifteenth section of the treaty of Guadalupe Hidalgo, and laid before said commission, as consisted of the evidence of persons since deceased; and the Government, in defending against said claim, should have like rights. And the said amendatory act provided that such evidence should be received by the Court of Claims, so far as the subject-matter thereof is competent testimony, and the court should give it such weight as in their judgment, under all the circumstances, it ought to have.

Fourth. Neither of said acts authorized an appeal from the decision of the Court of Claims upon said claim; but the first mentioned of said acts declared that the loss or damage sustained by said Atocha, being adjudicated and determined by said court, the same should be paid to him out of any money in the Treasury not otherwise appropriated: *Provided, however*, That the amount so to be paid should in no event exceed the balance of the three and a quarter millions of dollars provided by the fifteenth article of the treaty of Guadalupe Hidalgo for the payment of claims of citizens of the United States against the Govern-

ment of Mexico, which still remains unapplied to that object; which limitation upon the amount to be paid to said Atocha was duly observed by the Court of Claims in rendering its decision, as appears by the judgment of the court as above set forth.

Fifth. In view of the foregoing positions, the undersigned are of the opinion that it was the intention of Congress that the Court of Claims should act in the premises, not as a court trying an action against the United States, but as a commission similar to that which was organized in the year 1849, under the fifteenth article of the treaty of Guadalupe Hidalgo; that no claim against the United States was submitted to its adjudication; that the United States had, in fact, no interest in the issue of the proceeding, being a mere holder of a fund provided by treaty for the payment of claims against the Republic of Mexico; that when a rehearing was granted by Congress to Atocha, it was intended that it should be had on the same terms that the previous hearing was had before said commission; and that as no appeal lay in favor of either the claimant or the United States from the decision of that commission, but its awards were by said treaty declared to be final and conclusive, so, in the absence from the act for the relief of Atocha of any provision for an appeal from the decision of that court, no such appeal lies, unless some other provision of law authorizes it.

And the undersigned are further of the opinion that the general provisions of law contained in the acts of March 3, 1863, and June 25, 1868, in relation to appeals from judgments of the Court of Claims, do not apply to this case, because the first named of said acts gives an appeal only from judgments on claims against the United States, and the latter gives it only from judgments adverse to the United States; and the decision in Atocha's case was neither upon a claim of that description, nor was it adverse to the United States.

III.

ARGUMENT.

If the return of the Court of Claims shows a sufficient answer to the alternative writ, then it results that this court will not by a peremptory writ compel the said court to allow the appeal, or transmit the record in the said cause to this court, in order that it may be examined here. The return to the alternative writ is sufficient for the following reasons:

1. Because no appeal from the award of the said court was authorized or provided by the act of Congress under which the Court of Claims was "*directed*" to examine the said claim, nor is any appeal from said award authorized by any other act of Congress authorizing appeals from judgments of said court.

2. Because the Court of Claims, in fixing and determining the amount of the claim which they were "*directed*" by the said act of Congress to examine, *acted only as commissioners, under the provisions of Article XV of the treaty between the United States and Mexico*, and not as a court exercising a portion of the jurisdiction conferred upon the said court by the act providing for its organization, approved February 24, 1855, or the act amendatory thereof, approved March 3, 1863.

3. Because the said act of Congress, under which the said Court of Claims acquired jurisdiction to examine the said claim, provides that "*the loss or damage so sustained, being adjudicated and determined by the said court, the same shall be paid to the said Alexander J. Atocha out of any money in the Treasury not otherwise appropriated.*"

4. Because the adjudication of the Court of Claims under the said statute, and the determination of the amount thereof, *was not the rendition of a judgment against the United States, but only an award against a particular fund created for a special purpose, and payable only in satisfaction of injuries for which indemnity had been provided by treaty stipulation.*

5. Because Congress, in the act directing the Court of Claims to examine this claim, declared upon what terms, or upon what finding or adjudication, the sum should be paid, and that was *upon the finding or adjudication of the Court of Claims.*

These propositions we shall consider in their order.

A. NO APPEAL FROM THE AWARD OF THE COURT OF CLAIMS IN SAID CAUSE IS ALLOWED OR AUTHORIZED BY LAW.

It is clear that the *appellate* jurisdiction of this Court is subject to statutory regulation. Congress may either confer or withhold from this Court *appellate* jurisdiction in any case or in any class of cases.

Durousseau vs. *United States*, 6 Cranch, 307.

Wiscart vs. *Douchy*, 3 Dallas, 321.

Sarchet vs. *United States*, 12 Peters, 143.

These decisions are so familiar to the Court that we need only refer to them here; and each of them declare that the Supreme Court takes its appellate jurisdiction over cases, "with such exceptions and under such regulations as the Congress shall make."

The act of Congress by which the Court of Claims acquired jurisdiction of this case did not give any right of appeal from the adjudication of said claim or the award rendered thereon. And unless such appeal is conferred by the fifth section of the act of Congress, approved March 3, 1863, (12 Stats. at Large, pp. 765, 766,) or by the 1st section of the act of Congress approved June 25, 1868, (15th Statutes at Large, p. 75,) then the Court of Claims were justified in refusing the application for the allowance of said appeal, and its return to the alternative writ must be held to be sufficient.

The first of these acts provides, "*that either party may appeal to the Supreme Court of the United States from any final judgment or decree which may hereafter be rendered in any case wherein the amount in controversy exceeds three thousand dollars.*" By the second, it is declared "*that an appeal to the Supreme Court shall be allowed on behalf of the United States from all the final judgments of the said Court of Claims* ADVERSE TO THE UNITED STATES, *whether such judgments shall have been rendered by virtue of the general or any special power or jurisdiction of said Court.*"

It becomes important to determine, therefore, whether, under the act for the relief of Alexander J. Atocha, the Court of Claims was not acting under a special jurisdiction and for a special purpose, and not in the exercise of its ordinary powers or jurisdiction, by which the provisions of the above statutes in regard to appeals would become applicable to that case. It is clear that the examination of this claim as contemplated by this act of Congress, had none of the features of a suit against the United States, prosecuted under the several acts establishing the Court of Claims and defining its jurisdiction. That act directed the Court of Claims to do the several acts or find the several facts in the first paragraph of the return. The examination by that Court was limited to the ascertainment of these facts. It could not proceed beyond these, nor make an award which should not be in accordance with the requirements of this act. The Court is to decide whether the claim was a just one against Mexico when the treaty of Guadalupe Hidalgo was ratified, and whether embraced by the said treaty; and if so, then the Court of Claims was to fix the amount thereof, not exceeding a certain sum; which amount being ascertained, the same was directed to be paid out of any money in the Treasury not otherwise appropriated. This does not contemplate the rendition of a judgment, but only the making of an award, which is to be final and conclusive both on the claimant and the United States. By this act a special jurisdiction was conferred upon the Court of Claims, and a special mode of determining the case which it was directed to examine was pointed out and provided. But this special jurisdiction, and this special mode of procedure, contemplated no appeal to any other tribunal, nor did it provide for any review of the award made by the Court under this special jurisdiction. In such a case

the right of appeal is not conferred as an incident of the special jurisdiction or power, nor can the general laws giving the right of appeal from judgments of the Court of Claims adverse to the United States be invoked to sustain such an appeal. The case of the *United States* vs. *Nourse* (6 Peters, pp. 493, 494) is an authority in support of this proposition. In that case the right of appeal was claimed by the United States in a case under the act of 1820, where the execution of a distress warrant against a Government debtor had been stayed by injunction, from which the United States prayed an appeal. The Court, in deciding the question, uses the following language:

> Whilst Congress seems disposed to protect the citizen from oppression by the exercise of the extraordinary powers vested in the Government under the act of 1820, they were not willing that the proceedings should be arrested except upon equitable ground. *No provision is made in the act for an appeal by Government; but it is insisted that this right is secured by the general provisions of the act of* 1803. This act authorizes an appeal from a decree or judgment of the district court, rendered in the ordinary exercise of its jurisdiction, which is limited to cases at law and of admiralty and maritime jurisdiction. It may be admitted that an enlargement of the powers of the district court, by giving a new remedy, would not require a special provision to secure the right of appeal; *but if a new jurisdiction be conferred, and a special mode be provided by which it shall be exercised, it is clear that the remedy can not be extended beyond the provisions of the act.*
>
> If provision had not been made in the act allowing an appeal to the aggrieved party under the sanction of a judge of the Supreme Court, he could take no appeal from the decision of the district judge. *And as there is no provision in the act authorizing an appeal by the Government, is it not equally clear that it can take no appeal. In judicial proceedings no exclusive rights are given to the Government in this respect over other suitors except by statutory provisions.*

Nor is the right of appeal, in the case under consideration, at all aided by the decision of this court in the case of *Zellner, Ex parte*, (9 Wallace, p. 244.) In that case the court held that the right of appeal was conferred by the

fifth section of the act of March 3, 1863, (amendatory of the act for the organization of the Court of Claims,) because the act of March 12, 1863, by which that court was authorized to examine the claims of the owners of abandoned or captured property, was a general act enlarging the jurisdiction of the Court of Claims, *and prescribed to it no special proceedings by which the cases embraced by the enlarged jurisdiction should be heard or determined.* But it is evident that this decision would have been otherwise had the jurisdiction been a limited or special one, or had the Court of Claims been limited by Congress, as to the manner in which the new or enlarged jurisdiction should be exercised.

The act of June 25, 1868, can not be invoked to sustain this appeal, because the award which the Court of Claims made under the special statute for the relief of Atocha was not adverse to the United States, but against a special fund provided by Mexico and held only in trust by the United States. The fund out of which this claim was directed to be paid was a part of the consideration to be paid to Mexico in consideration of the territory ceded by that Government to the United States by the treaty of February 2, 1848. The consideration to be paid for that territory was twelve millions of dollars to the Mexican Government, (Article XII of the treaty,) and three and one-quarter millions of dollars to be paid to citizens of the United States in satisfaction of their claims against the Government of Mexico, (Article XV of the treaty.) Is it not clear that the United States was bound to pay the whole of this sum to Mexico? If the claims presented and allowed did not amount to the sum set apart for their payment, did not the remainder of the fund belong to Mexico? Was not the United States a *trustee* holding this money to discharge obligations against Mexico? Did

not any sum which remained in the hands of the United States, after discharging the obligations for which it was set apart, belong to Mexico? Is it not clear that a trustee is bound to pay to his *cestui qui trust* the funds remaining in his hands after the objects of the trust have been satisfied and the obligations of the trust discharged.

Congress seemed to have regarded the unexpended balance of this fund remaining in the possession of the United States as the rightful property of Mexico, unless it should be absorbed in the payment of this claim, for it expressly limits the amount which the Court of Claims may award in satisfaction of the claim of Atocha to "*the balance of the three and a quarter millions of dollars provided by the fifteenth article of the treaty of Gaudaloupe Hidalgo for the payment of claims of citizens of the United States against the Government of Mexico, which still remains unapplied, to that object.*"

The act of June 25, 1868, was passed to give the United States the right of appeal in the cases over which the Court of Claims acquired jurisdiction by the third section of the act of March 12, 1863. The Court of Claims had refused to allow an appeal prayed by the United States from a judgment rendered under that act, and it was to provide for appeals in that class of cases that this act was passed. It was passed before the decision in the case of Zellner, but since the decision in that case it would seem to be without any force, because all the rights intended to be given by it are secured by the fifth section of the act of March 3, 1863. It results, therefore, that this appeal can not be allowed for the following reasons: 1st. Because the act conferring the jurisdiction is a special act, prescribing a special mode of examination, and limiting the court in its power to award indemnity to a sum not exceeding a certain amount. 2d. Because the finding of

the Court of Claims was in no sense a judgment, but only an award, which, by the terms of the act conferring the jurisdiction, was final and conclusive. 3d. Because the claim of Atocha, which the Court of Claims was "directed" to examine, was a claim against Mexico, and the award is payable out of funds which the United States hold in trust for Mexico, and the award is not therefore adverse to the United States.

B. THE COURT OF CLAIMS IN ITS EXAMINATION OF THE CLAIM OF ATOCHA ACTED ONLY AS COMMISSIONERS, AND THEIR AWARD IS THEREFORE FINAL AND CONCLUSIVE.

To demonstrate this proposition requires an examination of the article of the treaty under which the United States agreed to pay the sum of three and one-quarter millions of dollars to discharge the Government of Mexico from its obligations to citizens of the United States; the provisions of the act of Congress for carrying into effect that article of the treaty; and the act by which the Court of Claims was directed to examine the claim of Atocha. That article of the treaty which relates to this subject is as follows:

ARTICLE XV. The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever canceled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one-quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the Government of United States, whose awards shall be final and conclusive; provided that, in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favor of any claim not embraced by these principles and rules. * * * * (Stats. at Large, vol. 9, p. 933.)

The act of Congress passed to give effect to this provision of the treaty provides in its *first* section as follows:

> That the President of the United States, by and with the advice and consent of the Senate, shall appoint three persons, who shall constitute a Board of Commissioners, to meet at the city of Washington, at some early day to be designated by the President, whose duty it shall be *to receive and examine all claims of citizens of the United States upon the Republic of Mexico, which are provided for by the treaty between said Governments of the United States and Mexico, concluded on the second day of February, eighteen hundred and forty-eight*, and which may be presented to the said Board of Commissioners, and to decide thereon according to the provisions of the said treaty and of the first and fifth articles of the unratified convention concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three.

The *sixth* section of this act provides:

> That the said commissioners shall report to the Secretary of State a list of all the several *awards* made by them, and a certified copy thereof shall be by him transmitted to the Secretary of the Treasury, *who shall thereupon* distribute in ratable proportions, among the persons in whose favor the awards shall have been made, the amount stipulated in the fifteenth article of the treaty, according to the proportions which their respective *awards* shall bear to the said three and one-quarter millions of dollars. (Stats. at Large, vol. 9, pp. 393, 394.)

The principles upon which the said claims were to be decided, as indicated by the first and fifth sections of the unratified convention of November 20, 1843, were as follows: In the first of those articles those principles and rules were indicated in the terms of the oath to be taken by the members of a commission proposed to be organized thereunder, which required them "to examine and decide impartially the claims submitted to them, * * * according to the proofs which should be presented, the principles of right and justice, the law of nations, and the treaties between the two republics."

The *fifth* article refers to claims which were considered by the commissioners under the treaty of April 11, 1839,

and referred to the umpire, but not decided by him, and provides that such claims shall be referred to and decided by the umpire to be selected under the convention of November 20, 1843. (Stats. at Large, vol. 9, pp. 942, 943.)

Now, referring to the act by which the Court of Claims is directed to take jurisdiction of the claim of Atocha, we find that it is limited in its requirements to the ascertainment and consideration of the following particulars:

> 1. An examination into the claim of Atocha against the Government of Mexico for losses sustained by him by reason of his expulsion from that republic in 1845. 2. A decision of the question whether his claim was a just one against Mexico when the treaty of 1848 was ratified. 3. A decision of the question whether, if found just, it was a claim embraced by that treaty; and 4. If these points be decided in his favor, then a fixation and determination of the amount of the claim. (15 Stats. at Large, 595.)

The *commissioners* appointed to carry out the requirements of the treaty had similar duties to perform. They were to examine all claims of citizens of the United States upon the Republic of Mexico, which were provided for by the treaty concluded February 2, 1848. They were to decide whether any claim presented to them was embraced by the treaty; they were required to decide if the claims submitted to them were just claims against Mexico, when examined upon "*the proofs which should be presented, the principles of right and justice, the law of nations, and the treaties between the two republics.*" If a claim of this character was presented to them, then they were to fix and determine the amount thereof and make an award for the amount found due; and their decision, either for or against a claim, was by the terms of the treaty final and conclusive. The Court of Claims had, by the act for the relief of Atocha, prescribed to it the same duties and the same extent of examination. The power of the Court of Claims to make an award did not exist, unless it should

find all the facts which the commissioners were required to find; and, having found those facts, they had no power to make an award if the fund provided for its payment had been exhausted.

As in the act creating the Board of Commissioners, it is declared that the fund shall be distributed by the Secretary of the Treasury, upon the presentation to him of a certified copy of the awards, so in the act for the relief of Atocha, it is provided that payment shall be made upon the award or finding of the Court of Claims.

The *intention* of Congress in passing the act for the relief of Atocha is to be gathered from the act itself, and not from any general laws regulating the jurisdiction and practice of the Court of Claims. These have no application, if the jurisdiction conferred upon the Court of Claims in respect to this claim is limited and special. That this act is of that character is clear from its terms and object. Its terms, as we have already shown, contemplate no judgment adverse to the United States. Its *purpose* was to secure to Atocha a tribunal for the reexamination of his claim against Mexico. The claim had been submitted to the Board of Commissioners, and by it rejected. Atocha importuned Congress for an opportunity of showing that the decision of the Commissioners was erroneous and did him injustice. *It was competent for Congress to provide another commission for the investigation of this claim.* The execution of that provision of the treaty which was exclusively for the benefit of citizens of the United States was left entirely to Congress, so far as the tribunal to investigate the claims was concerned. The treaty did not in any manner limit the power of Congress in this respect; and when the claim of Atocha was presented to it, the right and power of that body to afford him relief could not be called in question

or denied. Congress, acting in that belief, conferred upon the Court of Claims the same powers which the act of 1849 had conferred upon the Board of Commissioners. But the authority of Congress to the Court of Claims (acting as Commissioners) was coupled with a limitation, which declared that the Court should make no award unless there were funds belonging to Mexico in the possession of the United States which might be applied to the payment of the awards. *If that fund had been exhausted, then the Court of Claims had no power under this act to render any judgment against the United States. The Court of Claims were only discharging a duty which the Board of Commissioners had failed to discharge, and which was expressly limited to the distribution of the balance of the fund provided by Mexico which still remained applicable to the payment of the claims for which provision was made in Article XV of the treaty.*

This case is analogous in principle to that of the *United States* vs. *Ferriera*, (13 Howard, p. 40.) In that case Ferriera had neglected to prosecute his claim within the time prescribed in the act of 1834, and Congress, by an act approved March 3, 1849, authorized and directed the United States district judge for the Northern District of Florida to receive and adjudicate the claim of the said Ferriera and others. Under the authority of this act the district judge adjudicated the claim and made an award against the United States. The United States prayed an appeal to the Supreme Court, and in passing upon the question as to whether an appeal could be entertained in such a case this Court used the following language:

> The law of 1823, therefore, and not the stipulations of the treaty, furnishes the rule for the proceedings of the territorial judges, and determines their character. And it is manifest that this power to decide upon the validity of these claims is not conferred upon them as a judi-

cial function to be exercised in the ordinary forms of a court of justice. * * * It is too evident for argument on the subject that such a tribunal is not a judicial one, and that the act of Congress did not intend to make it one. The authority conferred on the respective judges was nothing more than that of commissioner, to adjust certain claims against the United States; and the office of judges and their respective jurisdictions are referred to in the law merely as a designation of the persons to whom the authority is confided, and the territorial limits to which it extends. The decision is not the judgment of a court of justice. It is the award of a commissioner. The act of 1834 calls it an award. And an appeal to this court from such a decision by such an authority, from the judgment of a court of record would be an anomaly in the history of jurisprudence. *An appeal might as well have been taken from the awards of the Board of Commissioners under the Mexican treaty which was recently sitting in this city.*

13 Howard, pp. 40–4.

To this effect, and in recognition of these principles, are the following cases:

United States vs. *Ritchie*, 17 How., 525, 531.

United States vs. *The Circuit Judges*, 3 Wall., 673.

The proposition for which we are contending here is much strengthened by the provisions of the act amendatory of the act for the relief of the said Atocha, approved April 5, 1870, which authorized the use in the Court of Claims, by either party, "of such portions of the evidence taken in pursuance of the rules and regulations of the commission, * * * and laid before said commission, as consists of the evidence of persons since deceased."

(Stats. at Large, vol. 16, p. 633.)

It will not be denied that if Congress had *repealed* section 9 of the act approved March 3, 1863, and conferred upon the Court of Claims jurisdiction of claims "growing out or dependent upon treaty stipulations," that an appeal could be prosecuted from all judgments rendered in such cases. But the repeal of that section of the statute would not in any way have benefited Atocha, be-

cause if he had filed his petition, as any other claimant, in the Court of Claims, having a claim against the United States, he would have met with the plea that his case was *res adjudicata*, and that the decision of the board of commissioners upon his claim was final and conclusive. This is clear from the principles decided in the case of *Comegys* vs. *Vasse*, 1 Peters, 212. In that case it was declared that the decision of the board of commissioners, under the 11th article of the treaty between the United States and Spain, concluded in 1819, was final and conclusive. Judge Story delivering the opinion of the court used the following language:

> The object of the treaty was to invest the commissioners with full power and authority to receive, examine, and decide upon the amount and validity of the claims upon Spain for damages and injuries; their decision within the scope of their authority is conclusive and final. If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises is not re-examinable; the parties must abide by it as the decree of a competent tribunal of exclusive jurisdiction. *A rejected claim can not be brought again under review in any judicial tribunal.*

These principles are expressly reaffirmed in the case of *Meade* vs. *The United States*, 9 Wallace, 691.

In that case, the act conferring jurisdiction provided that the claim should be referred *to the Court of Claims for adjudication thereof pursuant to authority conferred upon said court* BY ANY EXISTING LAW TO EXAMINE AND DECIDE CLAIMS AGAINST THE UNITED STATES.

The case was heard by the Court of Claims, and, although conceded to be meritorious, it was decided adversely to the claimant, upon the principle declared in the case of *Comegys* vs. *Vasse*. It is clear, therefore, that the act for the relief of Atocha would have been unavailing if the case had been referred to the Court of Claims in

such terms as to have authorized that Court to exercise, in respect to it, a portion of the jurisdiction under which it examined and decided ordinary claims against the United States. If it acted as a court in the exercise of a portion of its judicial functions, then the plea of *res adjudicata* would have been a complete answer, and a perfect defense to the claim. But Congress gave to the Court of Claims, in respect to this claim, only such powers as the Board of Commissions possessed. It designed that the act for the relief of Atocha should be *effective*, and not in any manner to be annulled by technical defenses or objections; therefore it provided for no appeal, and declared that the amount due being determined by the Court of Claims, should "be paid out of any money in the Treasury not otherwise appropriated."

C. THE AWARD OF THE COURT OF CLAIMS IN FAVOR OF ATOCHA UNDER THE SPECIAL ACT FOR HIS RELIEF, IS PAYABLE UPON THE ADJUDICATION AND DETERMINATION OF THE COURT OF CLAIMS.

Acts of Congress for the relief of a citizen are to be construed *liberally*, so as to *effect* and not *defeat* the intention of the legislature in passing them.

In the case of *Cross* vs. *United States*, 14 Wall., 483, this court declared that the Court of Claims ought to have interpreted an act of Congress passed for the furtherance of hearing a claim against the Government in a liberal spirit, and not in a narrow view of the legislative intention, and so as to give substantial effect to technical defenses.

The *intention* of Congress in passing the act for the relief of Atocha is as clearly expressed as human language can make it. That *intention* is neither obscure nor doubtful, for the act expressly declares that the claim being determined *by the Court of Claims* in favor of Atocha, "*the*

same shall be paid out of any money in the Treasury not otherwise appropriated." There is no purpose expressed here that the finding or award shall be reviewed or re-examined either in this Court or by any other tribunal. The adjudication and determination of the Court of Claims is conclusive and final, *and upon that alone payment is directed to be made.* No argument in support of this proposition could add force to the clearly expressed declaration of the statute, and upon *that* we submit that this proposition is clearly established.

D. THE FINDING AND ADJUDICATION OF THE COURT OF CLAIMS IN FAVOR OF ATOCHA, UNDER THIS SPECIAL STATUTE, IS NOT A JUDGMENT AGAINST THE UNITED STATES, BUT THE AWARD OF A COMMISSION AGAINST, AND PAYABLE OUT OF A SPECIAL FUND.

We have in other parts of this argument referred to and incidentally discussed these propositions. And we need only add to what we have already said upon these questions, that Congress, in the special act for the relief of Atocha, provided a different manner of proceeding and a different direction for the payment of the claim than is provided by the general law for the examination and payment of ordinary claims, in respect to which the Court of Claims may render judgments against the United States. Ordinarily the Court of Claims may investigate and decide upon "any claim against the United States founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States." That court in such cases has no concern with the question of appropriation, or the manner in which its judgments shall be paid or satisfied. Its jurisdiction in respect to such cases is not at all de-

pendent upon the existence of an appropriation or the condition of a special fund. In respect to the case of Atocha, under the provisions of the act for his relief, the Court of Claims could not proceed at all until the existence of a fund out of which the claim could be paid had been ascertained. *If the fund out of which the special act directed the payment of the claim had been exhausted, then the jurisdiction of the Court of Claims and its power to adjudicate the claim ceased.*

The judgments of the Court of Claims, rendered under its ordinary jurisdiction, are, by the *seventh* section of the act of March 3, 1863, (12 Stat. at Large, p. 766,) authorized to be paid "out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of said Court of Claims and signed by the Chief Justice, or, in his absence, by the presiding judge of said court." In the case of Atocha, the United States, by the special act for his relief, admit no liability beyond the amount remaining in its hands applicable to the payment of claims of citizens of the United States, for which provision was made by Article XV of the treaty of February 2, 1848. If Congress had deemed the claim of Atocha *a claim against the United States*, which it was bound to pay without regard to the existence of a special fund, why limit the power and jurisdiction of the court by a condition which would defeat both if the funds were exhausted? If the Court of Claims, under this act, had power to render a general judgment against the United States under its ordinary jurisdiction, and its award in favor of Atocha is such a judgment, then it could be paid as provided by the *seventh* section of the act of March 3, 1863. If it is not such a judgment, but only an *award* against a special fund held

by the United States as *trustee* for the payment of the claims of citizens of the United States against Mexico, as we insist it is, then it could not be paid as other judgments of the Court of Claims are directed to be paid; and if the Court of Claims had rendered a judgment, as in ordinary cases in which it has jurisdiction, and the fund referred to in the special act had been exhausted, then the Secretary of the Treasury would have no power to pay it, although it should be a general judgment against the United States. In that case we should have presented the unusual spectacle of a judgment rendered against the United States in its own courts and by its own consent, which the Secretary of the Treasury had no power to pay, because the act under which the claim was authorized to be examined by the Court of Claims admitted no liability and provided for no payment, except out of a special fund. Surely such an administration or execution of the act for the relief of Atocha would have been an idle mockery, and an inexcusable defeat of the clearly-expressed purpose of Congress. It is evident that Congress understood in what manner its act for the relief of Atocha could be made effective. It therefore admitted no liability against the United States, nor authorized any judgment against it, unless there were funds in the possession of the United States belonging to Mexico which might be applied to the payment of Atocha's claim. If there were such funds, then the act declares that they shall be applied to that purpose *upon the adjudication and determination of those facts which the Court of Claims was directed by the special act to find.* Is it not clear that such a finding under such an act was only the award of commissioners, and that therefore neither the acts of March 3, 1863, or that of June 25, 1868, in regard to appeals from "*judgments of the Court of Claims adverse to the United States*"

are applicable to this case, nor sufficient to authorize this court to entertain an appeal from a decision so made?

E.—THE ACT OF CONGRESS FOR THE RELIEF OF ATOCHA DECLARES THAT THE CLAIM SHALL BE PAID ONLY UPON THE FINDING OR DETERMINATION OF THE COURT OF CLAIMS.

This declaration of Congress, in regard to the *terms* upon which the payment of the claim of Atocha shall be made, is inconsistent with an *intention* to allow any appeal from the award or finding of the Court of Claims. It provides in respect to this claim a special mode of procedure, and the ascertainment of certain facts which are to be found exclusively by the Court of Claims. Is any tribunal, other than the Court of Claims, authorized to ascertain if the claim of Atocha was a just one *against Mexico*, when the treaty of February 2, 1848, was concluded, or whether it was embraced or included in the provisions of the said treaty, or what amount of damages Atocha sustained by reason of his expulsion from the Republic of Mexico in 1845. Clearly no other tribunal could determine these facts. It is equally clear that Congress could commit the examination of this claim *exclusively to the Court of Claims;* and if it has done so, then its decision is not subject to re-examination here. In the case of *United States* vs. *Ferriera*, (13 Howard, 47,) this court declare the power of Congress upon the subject of providing for the adjudication of claims against the United States in the following language:

> When the United States consent to submit the adjustment of claims against them to any tribunal, they have a right to prescribe the conditions on which they will pay.

This court has reaffirmed these principles in a case

which came here by appeal since the Court of Claims was organized.

In the case of *De Groot* vs. *United States*, 5 Wall., 419, the Court use upon this subject the following language:

> If therefore the Court of Claims has the right to entertain jurisdiction of cases in which the United States is defendant, and to render judgment against that defendant, it is only by virtue of acts of Congress granting such jurisdiction, and it is limited precisely to such cases, both in regard to parties and to the cause of action as Congress has prescribed. It is true that ordinarily when we seek for the foundation of this jurisdiction we look to the general laws creating the Court, and defining causes of which it may have cognizance. But it is equally true that whenever Congress chooses to withdraw from that jurisdiction any class of cases which had before been committed to its control, as it has done more than once, it has the power to do so, or to prescribe the rule by which such cases may be determined. Its right to do this in regard to any particular case, as well as to a class of cases, must rest on the same foundation, and no reason can be perceived why Congress may not at any time withdraw a particular case from the cognizance of that Court, *or prescribe in such case the circumstances under which alone the Court may render judgment against the Government.*

Even if the claim of Atocha were a claim against the United States upon which the Court of Claims might render a judgment in the exercise of its ordinary jurisdiction, still no appeal could be prosecuted from such judgment, because Congress has expressly declared in the act for the relief of Atocha, upon what terms and by what adjudication the claim should be paid, and these *exclude* the right of examination by any other tribunal. The case falls, therefore, within the principles of the cases of *United States* vs. *Ferriera* and *De Groot* vs. *United States*; and upon the authority of these it must be declared that Congress intended that the claim of Atocha—whether against the United States or against a special fund held by the United States as trustee for the Republic of Mexico—

should be paid upon the adjudication of the Court of Claims, and not otherwise. It is submitted, therefore, in conclusion, that the act of Congress for the relief of Atocha neither authorized nor contemplated any appeal to this Court, and that the return of the Court of Claims to the alternative writ issued in this cause is a sufficient answer, and shows a sufficient legal excuse for its refusal to allow an appeal from its award in the case of *Atocha* vs. *The United States.*

JOHN J. WEED,
W. PENN. CLARKE,
Attorneys for Respondents.

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 5, original.

ELIZA A. J. ATOCHA, ADMINISTRATRIX, &c.,

vs.

THE UNITED STATES.

Brief for the United States.

GEORGE H. WILLIAMS,
Attorney General.

JOHN GOFORTH,
Assistant Attorney General.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 5, original.

ELIZA A. J. ATOCHA, ADMINISTRATRIX, &c.,

vs.

THE UNITED STATES.

Brief for the United States.

STATEMENT.

This is an application for a peremptory mandamus to compel the Court of Claims to allow an appeal to the Supreme Court of the United States, and arises under the following state of facts:

Alexander J. Atocha, the claimant, a naturalized citizen of the United States, for some years resident in Mexico, was, on the 26th February, 1845, ordered by a decree of the Supreme Government of the Republic of Mexico to leave that country as a disturber of its internal order and tranquility. He was given a passport and safe conduct.

The Treaty of Guadalupe Hidalgo, entered into on the 2d February, 1848, between the United States and Mexico, authorized the organization by the United States of a board of commissioners to hear and determine claims by citizens

of the United States against Mexico. The awards were, by the treaty, to be final and conclusive. This board was organized in 1849, and Atocha made his claim for damages before it for his expulsion from Mexico. He presented all his proofs, and, after due consideration, the claim was, on the 15th day of March, 1851, disallowed by that board.

February 24, 1855, the Court of Claims was established by act of Congress.

March 3, 1863, the Court of Claims was re-organized by act of Congress, and given two new judges and additional powers. In the act, it is provided that no interest shall be allowed upon any claim up to the time of the rendition of the judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

In the 5th section of this act, it is enacted that either party may appeal to the Supreme Court of the United States upon any final judgment or decree which may thereafter be rendered in said court, when the amount in controversy exceeds three thousand dollars.

February 14, 1865, (13 Stat. at Large, 595,) Congress passed the following act:

"That the Court of Claims be, and the said court is hereby, directed to examine into the claims of Alexander J. Atocha against the Government of Mexico, for losses sustained by him, by reason of his expulsion from that republic in 1845, and if they shall be of opinion that the said claim was a just one against Mexico when the treaty of 1848 was ratified, and was embraced by said treaty, they shall then fix and determine the amount of the same, and that the loss and damage so sustained being adjudicated and determined by said court, the same shall be paid to the said Alexander J. Atocha, out of any money in the Treasury, not otherwise

appropriated: *Provided, however*, That the amount so to be paid shall in no event exceed the balance of the three and a quarter millions of dollars provided by the fifteenth article of the treaty of Guadalupe Hidalgo, for the payment of claims of citizens of the United States against the Government of Mexico, which still remains unapplied to that object."

June 30, 1865, claimant filed his petition in the Court of Claims, praying for judgment for two hundred and eleven thousand one hundred and ten $\frac{29}{100}$ dollars. The case was conducted in that court in accordance with all its rules, and just as any other proceeding therein is conducted. And on the 26th day of May, 1873, judgment was regularly entered by the court for the claimant in the sum of two hundred and seven thousand eight hundred and fifty-two $\frac{60}{100}$ dollars made up as follows:

Atocha's claim at time of his expulsion.....	$86,201 21
Interest for 28 years 2 months and 21 days, at 5 per cent.....	121,651 39
	$207,852 60

June 25, 1868, (15 Statutes at Large, 75,) Congress passed an act in these words: "That an appeal to the Supreme Court of the United States shall be allowed on behalf of the United States from the final judgments of said Court of Claims adverse to the United States, whether such judgments shall have been rendered by virtue of the general or any special power or jurisdiction of said court, under the limitation now provided by law for other cases of appeal from said court.

The following seem to be in brief the substance of the

reasons urged by the court below in support of their denial of the right of appeal:

1. That this is a suit in which the United States being a mere trustee has no interest, and consequently cannot appeal.

2. That the reference to the Court of Claims being a special one, and without provision for an appeal, that no appeal will lie from the judgment rendered.

3. That the reference to the Court of Claims was not to the court as a court, but as a second Mexican Commission to find certain facts, which finding was to be final and conclusive, without appeal, and to have none of the attributes of a technical judgment about it.

4. That as there was a limitation in the act of reference upon the amount to be paid to the claimant, and as that limitation was observed by the court in the wording of the judgment entered, and as there is no special right of appeal given in the act of reference, that this in some way deprives the United States of the right of appeal.

ARGUMENT.

The judgment of the court in this cause has the form and all the characteristics of a judgment. The reference by the act of Congress was to the Court of Claims, and not to the judges thereof. The court was to adjudicate and determine, and the defendant was to pay out of any money in the Treasury not otherwise appropriated, with a proviso fixing a limit to the amount.

The court sat as a court, and the defendants were brought into court as defendants, and to the amount of their judg-

ment was interested in their proceedings. The judgment against the defendants was to be paid by the defendants, out of their own treasury. The money, if not paid upon this judgment, will remain in the Treasury, and be subject to other appropriations.

The court was not sitting as a Mexican commission, and Mexico has no interest in this judgment. She is neither the richer nor the poorer for it. She was not consulted before the reference, and is not a party to it afterwards. The indemnity fund was retained to indemnify up to its amount, and was not an unpaid balance, subject to future settlement and payment of balance to Mexico.

If the defendants were only a trustee, it does not affect the right of appeal. Whether the suit was against defendants, or against defendants in their fiduciary capacity, the judgment could only be for, and must be satisfied by the payment of the sum found to be in hand, as trustee, and that is the judgment, in terms, in this case.

Ex parte Zellner, 9 Wallace, 244.

The right of appeal from the decisions of the Court of Claims, is exercisable in all cases, except where it is withheld.

U. S. *vs.* Adams, 6 Wallace, 103.
Klein's case, 13 Wallace, 145.

In this case it is not only not withheld, but it is expressly provided for by the acts of March 3, 1863, and June 28, 1868. The former, antedating this reference, provides "that either party may appeal to the Supreme Court of the United States from any final judgment or decree which may hereafter be rendered in any case where the amount is over

$3,000." The United States was certainly a party, and, as such, have a right to their appeal, given by the same law that made the court. The Congress of 1868, meeting during the pendency of this case in the Court of Claims, may have passed the latter act to meet the omission of all reference to appeal, now urged by the judges below. At all events, it binds that court in this as in all the other judgments it has rendered since its passage, and does away in terms with all distinctions between general and special power conferred upon it by saying, "that an appeal to the Supreme Court of the United States shall be allowed on behalf of the United States from all final judgments adverse to the United States, whether such judgments shall have been rendered by virtue of the general or any special power or jurisdiction of said court, under the limitation now provided by law for other cases of appeal from said court."

It is difficult to see how the adjudication and determination of this case by the Court of Claims can avoid the control of either one or both of those laws.

The cases under the "Captured and abandoned property act" are somewhat analagous to this. There the United States is the trustee for the true owner, and the submission of those cases was very much stronger towards the claimant's view than the language of this reference, and it was contended there that the decisions of the Court of Claims was not reviewable; but this court decided otherwise.

Ex parte Zellner, 9 Wallace, 244.

It was never claimed that the United States had no interest or rights as defendants in a suit under this act, because they were a mere trustee.

This principle is not affected by the fact that the judgment directs that the amount to be paid shall be within the balance of the trust fund.

United States *vs.* Ferreira, 13 Howard, 40, was an appeal asked for from the report of the judge of the district court for the northern district of Florida, and arose under the following state of facts:

By the *treaty with Spain*, February 22, 1819, Article IX provided:

"The United States shall cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by Spanish officers, and individual Spanish inhabitants, by the operation of United States army in Florida."

No tribunal named or mode of redress indicated in treaty.

Act of Congress to carry this into effect, *March* 3, 1819, (3 Stat. at Large, 768,) authorized and directed the Judges of the Supreme Court, at St. Augustine and Pensecola, to *receive and adjust* all claims within their jurisdiction, agreeably to the provisions of said treaty.

"SEC. 2. In all cases of decisions for claimants, the decisions, with the evidence on which they are founded, shall be reported by the judges to Secretary of Treasury, who, *being satisfied that same is just and equitable*, and within provisions of treaty, shall pay amount," &c.

When adjusted, to be referred to Secretary of Treasury for approval; no judgment of the court; simply a clerical duty performed under rules of evidence.

Act of Congress, June 26, 1834, (6 Stat. at Large, 569,) extends the act of March 3, 1819, to consideration of losses

in East Florida, by troops, in 1812 and 1813, when award seems to Secretary of Treasury just.

Still giving supervisory and controlling power to Secretary of Treasury.

Florida was admitted into the Union, March 3, 1845.

Act of Congress, March 3, 1849, (9 Stat. at Large, 788,) authorized the judge of the district court of northern district of Florida, to receive and adjudicate the claim, &c., under and subject however to the same report to and option of the Secretary of Treasury.

The acts of Congress vested no power beyond that of an accountant in the judges of either the territorial or United States courts. Everything, from evidence to conclusion, was to be sent to the Secretary of the Treasury that he might decide. The judge was but his clerk.

In Ferreira's case no submission of evidence and finding was made to the Secretary of the Treasury. The appeal was asked for by the United States to bring the evidence and conclusion direct from the judge below to the Supreme Court.

The Supreme Court dismissed the application for want of jurisdiction.

The acts of Congress provided that the proceedings should be sent to the Secretary of Treasury. This had not been done. It was his duty to examine the case thus sent to him, and to make an award and payment. The judge had power to do neither. There was nothing for the Supreme Court to review; no record to be brought into this court; no final judgment to be passed upon.

The treaty of 1879 provided that the United States should cause satisfaction to be made for injuries, &c., but provided

no tribunal to whom the injured should be referred. Congress, by its several above-recited acts, supplied the omission, but vested the whole determination and responsibility in the Secretary of Treasury, an officer whose executive acts are not reviewable by this or any other court.

"The tribunal derives its whole authority from the law creating it, and not from the treaty." In the Atocha case it authorizes and limits both the responsibility of Mexico and its ascertainment, and Congress had no power to create a new tribunal in which to bring Mexico.

If the reference of Atocha's case to the Court of Claims was to be submission to another tribunal sitting as a Mexican Commission, then it was without notice to Mexico, is not within the proviso of the treaty, and is illegal and void. "If it acts at all, it must act under authority of law, and must obey the law." It can only be a reference to the Court of Claims as a court. There was a suit and parties. A claimant proceeding by petition, asking for judgment in the usual way, and the United States defending; an appearance for each, proof regularly made and heard. It is a special reference to the Court of Claims, and within the act of Congress of June 25, 1868.

This was a final judgment of the Court of Claims. It was their duty by the terms of the reference to "fix and determine the amount of the same, and the loss and damage so sustained being *adjudicated* and determined by said court, the same shall be paid to the said A. J. Atocha out of any money in the Treasury not otherwise appropriated."

Their duty was to adjudicate, to judge, and decide as a court, and their decision is a judgment from which an appeal lies to this court, and not to the discretion of the Secretary of the Treasury.

The act of reference prescribed no form of judgment to be entered by the Court of Claims; the petition of Atocha prays, in the usual form, for judgment against the United States; the Court of Claims enters that which is in effect and substance a judgment against the United States. If any set phraseology or form of words is necessary to technically enter judgment, then we ask the court to issue a mandamus, directed to the Court of Claims, that the judgment may be clothed in proper and appropriate language, and reviewable by this court.

GEORGE H. WILLIAMS,
Attorney General.

JOHN GOFORTH,
Assistant Attorney General.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [illegible].

THE [illegible]
RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

[illegible]

IN ERROR TO THE [illegible]